

CC Docket No. 02-6
Request for Review

Rowan County School District
121 East Second Street
Morehead, Kentucky 40351

February 19, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, Maryland 20743

This is a letter of appeal of an Administrator's Decision on Appeal – Funding Year 2007-2008, dated December 27, 2007, made in reference to a funding decision from the SLD, dated July 26, 2007.

Contact person for this appeal:	Jeff Grubb 121 East Second Street Morehead, KY 40351 Telephone: 606-784-8928 FAX: 606-783-1011 Email: jeff.grubb@rowan.kyschools.us
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Applicant (Billed Entity):	Rowan County School District
Form 471 Application Number:	549274
Billed Entity Number:	128785
FRN:	1596737

Under a contract dated January 26, 2007, Applicant leased from Service Provider, a wide area network that provides Ethernet connectivity to seven (7) of Applicant's school sites and one (1) of Applicant's administrative buildings.

The service has a non-recurring charge of \$225,750 for capital investment recovery by Service Provider (the "Up Front Charge").

By letter dated May 1, 2007 (the "PIA Letter"), the SLD advised that 4/5 of the Up-Front Charge is "ineligible" because it is "outside the funding year". Because this is the only information provided in the PIA letter, Applicant does not know the SLD's basis for its position. A copy of the PIA Letter is attached.

The PIA letter requested a reply from Applicant, which was sent by Applicant to the SLD on May 14, 2007.

Then, on July 26, 2007, the SLD issued a Funding Commitment Report. In that Report, the SLD advised as follows: "The dollars requested were reduced to remove: the ineligible service: 4/5 of the one time charge outside of the funding year." A copy of the referenced page from that Funding Commitment Report is attached.

Finally, on December 27, 2007, an Administrator's Decision on Appeal – Funding Year 2007-2008 was issued which stated that the appeal was denied because Applicant had referenced the fact that paying the non-recurring charge would effectively reduce the monthly recurring charge. A copy of the Administrator's Decision on Appeal – Funding Year 2007-2008 is attached.

Based on the information provided, Applicant offers the following:

Pursuant to the WAN Fact Sheet, as provided on the SLD website, Paragraph 5 provides that "Eligible telecommunications services and internet access can include service provider equipment costs and/or a non-recurring charge for capital investment by the service provider." In our case, Service Provider's non-recurring charge for capital investment costs is \$225,750 and is an eligible charge as reflected in the WAN Fact Sheet. Applicant's previous statement that the non-recurring charge would effectively reduce the monthly recurring charge is irrelevant in the analysis of whether the non-recurring charge for the Service Provider's capital investment costs is eligible.

In addition, Paragraph 5 of the WAN Fact Sheet also provides that "Eligible telecommunications services and internet access can include service provider equipment costs and/or a non-recurring charge for capital investment by the service provider. However, in cases where the up-front or non-recurring charge is greater than \$500,000, this charge must be pro-rated over three years." In our case, Service Provider imposed an Up-Front Charge for capital investment recovery; but that Up-Front Charge is only \$225,750, which is well below the \$500,000 threshold. Yet, the SLD is requiring that this amount be pro-rated over the entire five (5) year lease term.

Following our review of the other eligibility requirements, we have been unable to locate any other regulation that would require an Up-Front Charge to be payable over the term of the lease and the SLD has been unable to point us to one.

For the foregoing reasons, Applicant respectfully requests that the FCC reconsider its Funding Commitment Decision and, consistent with the SLD's rules, fund all of the Up-Front Charge (as opposed to 1/5 of it) in the 2007 Funding Year by increasing the approved amounts for that period from \$97,388.12 to \$236,450.12.

Thank you for your consideration and support of the Rowan County School District.

Sincerely,

Jeff Grubb
District Technology Coordinator

Form 471 RAL Line Item Report

ERN: 1596737
Form 471 Application Number: 549274
Form 470 Application Number: 372340000600245
Name of Billed Entity: ROWAN COUNTY SCHOOL DISTRICT
Billed Entity Number: 128785
Address of Billed Entity: 121 E 2ND ST, MOREHEAD, KY 40351-1669
Telephone Number of Billed Entity: (606) 784-8928
Name of Contact Person: Jeff Grubb
Telephone Number of Contact Person: (606) 784-8928
Category of Service: Telecommunications Service
Contract Number: service order #1
Billing Account Number: 606-784-8928
Allowable Vendor Selection/Contract Date: 12/28/2006
Contract Award Date: 01/26/2007
Service Start Date: 07/01/2007
Contract Expiration Date: 06/30/2012
Pre-discount Amount: \$307,078.08
Discount Percentage Requested: 77%
Funding Commitment Request: \$236,450.12

FUNDING COMMITMENT REPORT
Service Provider Name: Cinergy Communications Company
SPIN: 143001182
Funding Year: 2007

Name of Billed Entity: ROWAN COUNTY SCHOOL DISTRICT
Billed Entity Address: 121 E 2ND ST
Billed Entity City: MOREHEAD
Billed Entity State: KY
Billed Entity Zip Code: 40351-1669
Billed Entity Number: 128785
Contact Person's Name: Jeff Grubb
Preferred Mode of Contact: EMAIL
Contact Information: jeff.grubb@rowan.kyschools.us
Form 471 Application Number: 549274
Funding Request Number: 1596737
Funding Status: Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 372340000600245
Contract Number: service order #1
Billing Account Number: 606-784-8928
Service Start Date: 07/01/2007
Contract Expiration Date: 06/30/2012
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: \$81328.08
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$45150.00
Pre-Discount Amount: \$126478.08
Applicant's Discount Percentage Approved by SLD: 77
Funding Commitment Decision: \$97388.12 - FRN approved; modified by SLD
Funding Commitment Decision Explanation: The dollars requested were reduced to
remove: the ineligible service: 4/5 of the one time charge outside of the funding
year.

FCDL Date: 07/26/2007

Wave Number: 012

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2008



Schools and Libraries Division

5-1-2007

Jeff Grubb
Rowan County School District
(606) 784-8928
Application Number(s): 549274

Response Due Date: 5-16-07

The Program Integrity Assurance (PIA) team is in the process of reviewing all Funding Year 2007 Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the Universal Service program. We are currently in the process of reviewing your Funding Year 2007 Form 471 Application. To complete our review, we need some additional information. The information needed to complete the review is listed below.

1) Based on documentation that you have provided, we have determined that FRN1596737 includes ineligible items. According to program rules, USAC is unable to fund ineligible products or services. The charges associated with ineligible items must be identified and removed. Listed below are the ineligible items and their associated costs:

4/5 of the 1 time charge that is outside of the funding year \$180,600

Please confirm if you agree with the cost allocation. If you do not agree with the cost allocation that we have produced, you must provide an alternative cost allocation identifying the cost(s) for the ineligible item(s).

If you do not respond within 15 days the FRN will be modified to remove the ineligible items.

For further information, see "Cost Allocation Guidelines for Products and Services" located in the Reference Area of the SLD Web site at:
<http://www.universalservice.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx>.

It is important that we receive all of the information requested **within 15 calendar days** so we can complete our review. **Failure to respond may result in a reduction or denial of funding.** **If you need additional time to prepare your response, please let me know as soon as possible.**

Should you wish to cancel your Form 471 application(s), or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s). Include in any cancellation request the Form 471 application number(s)

and/or funding request number(s), and the complete name, title and signature of the authorized individual.

Thank you for your cooperation and continued support of the Universal Service Program.

Brian Coots
Program Integrity Assurance
USAC, Schools and Libraries Division
Phone: 973-581-7540
Fax: 973-599-6579
E-mail: Bcoots@sl.universalservice.org



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2007-2008

December 27, 2007

Jeff Grubb
Rowan County Board of Education
121 East Second Street
Morehead, KY 40351-1669

Re: Applicant Name: ROWAN COUNTY SCHOOL DISTRICT
Billed Entity Number: 128785
Form 471 Application Number: 549274
Funding Request Number(s): 1596737
Your Correspondence Dated: September 24, 2007

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2007 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1596737
Decision on Appeal: Denied
Explanation:

- Upon thorough review of the appeal letter and the relevant documentation, USAC has determined that the up-front charge on FRN 1596737 does not meet program requirements for eligible up-front capital costs. According to program rules, service provider equipment costs and/or a non-recurring charge for capital investment by the service provider is considered eligible up-front capital cost. Your reply to PIA dated April 25, 2005 stated, "The non-recurring charge of \$225,750 is a one-time fee designed to lower our monthly lease rate with Cincrgy Communications for our digital transmission services for high-speed data connection." The intent behind the use of this payment option is to reduce the district's monthly lease rate during the term of the five year contract. As a result, PIA reduced the one-time charge in order to remove costs associated with service that covers the remaining four years of the contract. Based on the documentation

in the record, USAC supports the decision to reduce this funding request because your request included costs for service occurring outside the funding year. Consequently, the appeal is denied.

- Your FCC Form 471 indicates that some of the products and/or services for which you requested funding are scheduled to occur outside of the current funding year. FCC Rules require that all of the products and/or services for which discounts are approved be delivered within the current funding year. See 47 C.F.R. sec. 54.507(d). FCC Rules require that if 30% or more of the applicant's funding request includes ineligible products and/or services, then the funding request must be denied, otherwise the funding request will be reduced accordingly. See 47 C.F.R. sec. 54.504(d).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company



Step 6: Wide Area Network (WAN) Fact Sheet

Leasing a Wide Area Network is eligible for Schools and Libraries support but building or purchasing a WAN is not eligible.

This fact sheet provides information on the definition of a wide area network, examples of discounts on WANs, the definition of internal connections, evaluation of the applicant owner prohibition, and amortization of capital investment costs.

1. Definition of a Wide Area Network
2. Examples of Discounts on Wide Area Networks
3. Definition of Internal Connections
4. Evaluation of the Applicant Ownership Prohibition
5. Amortization of Capital Investment Costs

1. Definition of a Wide Area Network

A wide area network (WAN) is a voice, data, or video network that provides connections from one or more computers or networks within an eligible school or library to one or more computers or networks that are *external* to such eligible school or library. Excluded from this definition is a network that provides connections between or among buildings of a single school campus or between or among buildings of a single library outlet or branch, when those connections do not cross a public right of way.

Federal Communications Commission rules provide that, to the extent that states, schools, or libraries build or purchase a wide area network, the cost of such wide area networks is not eligible for support. However, wide area network capability can be obtained as a telecommunications service under the Schools and Libraries Program. Additionally, wide area network service can be eligible for discount as Internet access, if leasing of the wide area network is the most cost-effective means of obtaining Internet access. In that case, the service must be limited strictly to basic conduit access to the Internet.

Applicants can obtain support for the services of wide-area networks by leasing these services under the program rules that apply to telecommunications services and Internet access, but not by procuring WAN components as internal connections. The term "lease" refers to arrangements whereby the ownership of the facility remains with the service provider. No ownership attributes are undertaken by the lessee (applicant). Whether or not an arrangement constitutes a lease will be based on a review of contractual terms and conditions.

An understanding of how USAC defines local area networks, other internal connections, and wide area networks is important to ensure that applicants submit funding requests that contain only eligible products and services. In addition, applicants should understand the eligibility requirements for the categories of service, such as telecommunications services, Internet access, and internal connections. For example, telecommunications services can only be provided by an eligible telecommunications carrier. See Eligible Services Framework for further information.

FCC rules provide that the actual wires that carry data across public rights-of-way and the components located outside a school or library facility are WAN components and are evaluated for eligibility under telecommunications services and Internet access. Networking components located within a school or library facility are most often internal connections rather than WAN components.

However, there is an exception to this general rule. If certain conditions are met, components located at a school or library can be considered part of "end-to-end" telecommunications services or Internet access and can then be supported under these categories of service, rather than as internal connections. See On-Premise Priority 1 Equipment for further information.

FCC rules establish a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way.

2. Examples of Discounts on Wide Area Networks

Example A. Assume that the computers of a school district and library system are connected and share information among the various sites and use the network for voice telecommunications services, data transmission, and Internet access. The connections between the buildings are leased from an eligible telecommunications carrier. The price of the connections is eligible for support.

Example B. Assume that the computers of a school district and library system are connected among the various sites in order to share access to the Internet. The connections between sites are leased from a non-telecommunications carrier such as a cable company and are the most cost-effective means of accessing the Internet. The cost of leasing the connections is eligible for support as Internet access so long as the service is limited to basic conduit access to the Internet.

Example C. Assume that the computers of a school district and library system are connected and share information among the various sites and use the network for voice telecommunications and for the transmission of data. The connections between sites were *purchased* and installed by the school district and library system. These connections are

not eligible for support because the connections are purchased and installed by the school district and library system.

Example D. Assume that the computers of a school district and library system are connected and share information among the various sites and also use the network for voice telecommunications, transmission of point-to-point video, and Internet access. The connections between sites are *leased from a non-telecommunications carrier*. Assume further that this method of accessing the Internet is the most cost-effective. The proportionate price of the leased lines for obtaining Internet access is eligible for support but the costs attributable to the telecommunications services are not eligible. This eligible cost must be determined in accordance with USAC's cost allocation guidelines. The remaining price attributable to the leased connections for voice telecommunications and the point-to-point video service is not eligible for support because the service is not being provided by an eligible telecommunications carrier.

3. Definition of Internal Connections

As previously indicated, there is a rebuttable presumption that a connection does not constitute an internal connection (i.e., it is a wide area network) if it crosses a public right-of-way. See Eligible Services List and Frequently Asked Questions about Eligibility of Products and Services.

4. Evaluation of the Applicant Ownership Prohibition

Costs of eligible telecommunications services and Internet access must not provide ownership interest to applicants. Eligible costs in these two categories of service are for provision of services only, not applicant ownership.

The FCC has recognized that some business arrangements between an applicant and service provider, even if labeled a lease of services, can reach essentially the same result as a prohibited WAN purchase by applicants. USAC will not provide support on an agreement that is titled or described as a lease when, in effect, the terms of the agreement constitute a purchase.

Factors evaluated when making this determination include whether the applicant has exclusive access to the WAN facilities, whether a lease-purchase agreement exists, and whether a substantial payment for upfront capital costs is part of the agreement. Contracts with an option for the applicant to purchase WAN facilities will not be supported.

Support is not provided for the initial construction costs for WAN facilities being built for the exclusive use of an applicant, except in established rural areas where no acceptable alternatives exist. Except in such rural areas, applicants are expected to use the shared infrastructure facilities of service providers in order to obtain the most cost-effective service.

Although program support may not be used for the full construction costs of Wide Area Network facilities in a non-rural area, it may be used for a proportionate cost of WAN facilities that can be shared among multiple organizations.

USAC will review contractual terms, the technical configuration, and up-front construction costs to determine whether exclusive use is being provided. Costs in funding requests may be compared against the total costs of a service provider's construction project. These review steps allow USAC to determine whether the funding request is consistent with a simple lease of facilities (eligible) or whether it reaches essentially the same result as a prohibited WAN purchase by an applicant (not eligible).

5. Amortization of Capital Investment Costs

Eligible telecommunications services and Internet access can include service provider equipment costs and/or a non-recurring charge for capital investment by the service provider. However, in cases where the upfront or non-recurring charge is greater than \$500,000, this charge must be prorated over a period of at least three years.

Costs of eligible telecommunications services and Internet access must not provide ownership interest to applicants. Eligible costs in these two categories of service are for provision of services only, not applicant ownership.

Step 5 Calculate the Discount Level	Step 7 Submit Your Application for Program Support
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